

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action
	)	No. 09-10017-GAO
	)	
TAREK MEHANNA,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE

**MOTION HEARING**

John J. Moakley United States Courthouse  
Courtroom No. 22  
One Courthouse Way  
Boston, Massachusetts 02210  
Wednesday, July 13, 2016  
2:02 p.m.

Marcia G. Patrisso, RMR, CRR  
Official Court Reporter  
John J. Moakley U.S. Courthouse  
One Courthouse Way, Room 3510  
Boston, Massachusetts 02210  
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Mechanical Steno - Computer-Aided Transcript

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On Behalf of the Defendant

## P R O C E E D I N G S

THE CLERK: All rise.

(The Court enters the courtroom at 2:02 p.m.)

THE CLERK: The United States District Court for the District of Massachusetts. The court is in session. Be seated.

For a motion hearing in the case of *United States v. Tarek Mehanna*, 09-10017. Will counsel identify yourselves, please.

MR. CHAKRAVARTY: For the government, your Honor, Aloke Chakravarty.

MS. SILVA PALMER: Good afternoon, your Honor. Julie Silva Palmer for the defendant, Tarek Mehanna.

MR. WILLETT: Good afternoon, your Honor. Sabin Willett with Ms. Silva Palmer.

MR. CELLA: Good afternoon, your Honor. Arcangelo Cella with Ms. Palmer.

THE COURT: So as you know, I suggested that in light of something the circuit had said about the alternate possibilities of proof, that it might be possible to resolve the petition on that narrow issue. You've now briefed it. Thank you for the briefs. They're excellent. And so I would ask you now to address that point.

MS. SILVA PALMER: May I?

Good afternoon, your Honor. Before I get to the legal

1 argument, I think everyone makes -- we'd like to address the  
2 government's best-case scenario head on, and in that scenario,  
3 the government argues that Kohlmann was independent of the  
4 Yemen theory when he was, in fact, at the heart of the Yemen  
5 theory.

6 And to illustrate, I'd ask you to imagine the jury in  
7 the jury room. It had just retired after closing arguments and  
8 hearing the charge, and it's considering whether the government  
9 proved beyond a reasonable doubt that when Mehanna traveled to  
00:02 10 Yemen he sought a training camp, or was he looking for a  
11 school? What was his intent?

12 There was no direct evidence in the record, as the  
13 First Circuit observed, that answered that question. And the  
14 jury had to consider all the evidence, including evidence it  
15 heard only from Kohlmann. Now, relying only on that evidence,  
16 in its closing argument the government argued that Mehanna  
17 worked for al-Qa'ida. A proffered witness, a disinterested  
18 witness, he had advised media networks in general, and as an  
19 expert he had a special aura of reliability.

00:02 20 The jury knew that Mehanna went to Yemen and they're  
21 trying to figure out why he went. The expert says that he  
22 worked for al Qa'ida; what does that say about his intent in  
23 traveling to Yemen? That testimony cannot be immaterial, and  
24 for that reason, Kohlmann was not only material, he was central  
25 to the Yemen theory.

1           Moving on to the legal argument, we want to make three  
2 points: The first is that *Griffin* does not apply to this case.  
3 The government acknowledges that the *Brady* standard applies and  
4 not the standard under *Griffin*, but it applies the logic of  
5 *Griffin* in its argument, and that's an invitation for error.

6           The real test in this context is whether in the  
7 context of the entire record the absence of expressed evidence  
8 undermines confidence in the outcome of the trial; the test is  
9 not whether there was enough left in the record to convict when  
00:03 10 you take the tainted witness to the side. We can't answer that  
11 question directly without seeing the withheld evidence, but we  
12 can say that Kohlmann's testimony was material.

13           Second, I would like to address the *Conley* case which  
14 is directly on point here, and it shows that the government's  
15 arguments clearly were closed. Applying the standard, *Mehanna*  
16 has to show that Kohlmann impacted the trial in a way that  
17 undermines confidence in the verdict. The government's already  
18 conceded that Kohlmann provided the only actual link to  
19 al Qa'ida in the case, and Kohlmann alone allowed the  
00:04 20 government to argue that Mehanna worked for al Qa'ida. That  
21 testimony was not corroborated.

22           And in the trial the government used that testimony in  
23 that way. It repeatedly argued to the jury that the jury could  
24 infer intent on Yemen based on that testimony. It can't now  
25 cordon off Kohlmann and consider just what was left, because

1 what Kohlmann said had an impact on what the jury considered.

2 And then the third point, your Honor, is that applying  
3 the correct standard, Mehanna is entitled to some relief even  
4 if the Court finds that Kohlmann was not material on the Yemen  
5 theory, and the reason for that is that there were seven  
6 counts, and the analysis is a little bit different for each  
7 count because each count has different elements.

8 So in the first point, on *Griffin*, as I said, the  
9 government cites the *Brady* standard and concedes that this is  
00:04 10 not a sufficiency argument, but it's applying *Griffin* for its  
11 logic and the sufficiency rule. And if there can be any doubt  
12 that it's relying upon *Griffin*, it explicitly says so in page  
13 17 of its brief.

14 *Griffin* and *Brady* are opposite. The purpose -- under  
15 *Griffin*, we're looking to see whether there's any evidence in  
16 the record at all that could support a guilty verdict, and the  
17 reason for that is because we assume that there's been a fair  
18 trial and they make -- they make all inferences in favor of the  
19 verdict and ignore credibility judgments because we assume that  
00:05 20 the jury is competent in factfinding.

21 The purpose of the *Brady* line of cases is the  
22 opposite. In the *Brady* case, we're trying to determine if the  
23 trial process itself was unfair. The question is -- in order  
24 to determine whether the process was unfair, we'd consider  
25 whether the evidence that was withheld was material.

1           The inquiry considers the whole record to see how the  
2 government's error undermined -- whether it undermined  
3 confidence in the verdict. And in order to undermine  
4 confidence, the defendant doesn't have to show that he was  
5 innocent, he doesn't have to show that there were otherwise  
6 insufficient evidence in the record to convict, and he doesn't  
7 have to show that he would have been acquitted if the  
8 government had disclosed the evidence; the question is  
9 whether -- are we still confident in light of the evidence that  
00:06 10 the defendant would have been found guilty beyond a reasonable  
11 doubt.

12           Now, we don't apply a sufficiency analysis in a *Brady*  
13 case because the underlying assumptions that the trial was  
14 unfair -- or that the trial was fair in a sufficiency case,  
15 that assumption doesn't apply in a *Brady* case so there's no  
16 need to be differential to the trial process because it might  
17 have been tainted. And this is why the government doesn't cite  
18 any *Brady* cases that apply the sufficiency doctrine.

19           *Conley v. United States*, which we cite in our brief,  
00:06 20 is a great illustration of how sufficiency doesn't apply in a  
21 *Brady* case. That case was a perjury case. The government  
22 accused the defendant of lying about what he saw at the scene  
23 of a battery. There was no direct evidence. The government  
24 presented three witnesses: Two of those witnesses had  
25 credibility problems, and a third witness was presented as

1 disinterested.

2 The jury returned a guilty verdict, and the First  
3 Circuit affirmed that verdict on the sufficiency doctrine.  
4 Following the appeal, the defendant brought a 2255 based on the  
5 government's failure to disclose evidence concerning the third  
6 disinterested witness. The government argued in *Conley* that  
7 the testimony of the two witnesses alone provided sufficient  
8 evidence for the jury to convict even without the disinterested  
9 witness's testimony. The First Circuit said that that argument  
00:07 10 was clearly foreclosed because even if you cordon off that  
11 witness, that witness said things that could have impacted the  
12 jury's determination.

13 Applying *Conley* here, there is some remarkable  
14 parallels that have gone unanswered by the government in its  
15 brief. The government doesn't address this case at all. On  
16 direct appeal, the First Circuit said that there was sufficient  
17 evidence in the record to convict based on Yemen.

18 The government is urging the Court to put Kohlmann to  
19 the side and rule that there was enough based on what the First  
00:08 20 Circuit said to convict without considering Kohlmann. *Brady*  
21 requires consideration of how Kohlmann impacted the verdict,  
22 not whether there was enough left when you put the testimony to  
23 the side.

24 The First Circuit in *Mehanna's* case observed that  
25 there was no direct evidence of intent and affirmed on the



1 grounds that there was sufficient evidence on the Yemen theory.  
2 Ultimately, as the First Circuit recognized, the jury heard  
3 evidence on both theories, that he intended to find a camp and  
4 that he intended to find a school. And as we've just  
5 discussed, Kohlmann played a critical role in that  
6 determination.

7 The lay witnesses that the government put on all had  
8 credibility problems. They had testified inconsistently, they  
9 had changed -- some changed testimony over time, they were  
00:09 10 testifying pursuant to immunity deals, one had admitted to  
11 lying under oath. Kohlmann allowed the government, like in  
12 *Conley*, to put on a disinterested witness. And here the effect  
13 is arguably greater than it was in *Conley* because Kohlmann was  
14 an expert and he carries a greater aura of reliability as an  
15 expert. And just as Kohlmann urged the jury, Kohlmann's  
16 testimony did impact the outcome.

17 Finally, your Honor, *Mehanna* doesn't need to prove  
18 that Kohlmann impacted the outcome -- I'm sorry -- that  
19 Kohlmann was material to Yemen in order to be entitled to  
00:10 20 relief, and the reason for that is this: There were seven  
21 counts at trial. Six of them involved the Yemen theory.  
22 Counts 1 to 3 went to the jury on a general verdict. And the  
23 theory submitted to the jury for those three counts was that --  
24 it was either Yemen or the advocacy theory, as you're well  
25 aware. We don't know what the jury found on those three counts

1 because they returned a general verdict and there's no way to  
2 know which theory they chose.

3 Count 1 had an al Qa'ida element. And that was the  
4 only count in the entire case that had an al Qa'ida element.  
5 And we can't presume from the remaining counts that the jury  
6 would have found an al Qa'ida element on Count 1 from what they  
7 found in the other counts.

8 And that's all I have, your Honor.

9 THE COURT: Just on the last -- are you arguing as to  
00:11 10 Count 1 only the translation theory applied to Count 1?

11 MS. SILVA PALMER: No, on Count 1 it could have -- the  
12 jury's verdict could have been based on Yemen or it could have  
13 been based on the translation theory. And the government has  
14 essentially conceded -- and it's impossible to refute that  
15 Kohlmann was essential to the translation theory. So because  
16 we don't know whether the jury's verdict depended on Yemen or  
17 depended on advocacy where it was a general verdict, we don't  
18 know if the jury relied on the advocacy theory to find that  
19 count.

00:11 20 THE COURT: Okay. Let me come back to your main  
21 point, I think, which is that Kohlmann's testimony was material  
22 to the Yemen theory. Kohlmann said very little about Yemen,  
23 right? He said something --

24 MS. SILVA PALMER: He said some things about Yemen.

25 THE COURT: There are camps there and so on, and that

1 was controverted by the defense. It doesn't really matter  
2 whether there were actually camps there, does it?

3 MS. SILVA PALMER: It could have to the jury. We  
4 don't know what they considered. There's no way to know what  
5 the jury considered. Maybe --

6 THE COURT: The offense was going there with an  
7 intent. If it was a mistake, the defendant would still be  
8 culpable, wouldn't he?

9 MS. SILVA PALMER: It could have been. And under the  
00:12 10 sufficiency argument, that is the analysis that you'd apply.  
11 But here we don't know whether the jury found that testimony  
12 persuasive or not. We don't know if the jury would have said  
13 there's no Yemen -- there's no al Qa'ida in Yemen, and for that  
14 reason, we doubt that that was his intent in going there. They  
15 were trying to figure out what his intent was, and in doing  
16 that, they considered all the evidence; they didn't consider  
17 just the government's best case.

18 THE COURT: Okay. But besides that, you also argue  
19 that Kohlmann's testimony about the online work also impeaches  
00:13 20 the jury verdict on the Yemen theory?

21 MS. SILVA PALMER: Yes.

22 THE COURT: Why?

23 MS. SILVA PALMER: The reason is because Kohlmann said  
24 this translation that Tarek Mehanna produced -- the government  
25 said Tarek Mehanna produced -- was coordinated with al Qa'ida.

1 Kohlmann provided the sole-source testimony, the only link  
2 between al Qa'ida and Mehanna in the entire case. He said  
3 Mehanna worked for al Qa'ida.

4 THE COURT: Can you point me to that? Is that in your  
5 brief? Maybe it's in your brief.

6 MS. SILVA PALMER: Yes. Yes, it is in the brief.

7 Can you get me that cite, please?

8 THE COURT: If it's in the brief, I'll find it.

9 MS. SILVA PALMER: It's in the brief.

00:13 10 Kohlmann's testimony allowed the government to say  
11 when Tarek Mehanna translated these documents, he was working  
12 for al Qa'ida. There was no other connection to al Qa'ida in  
13 the case. He was the only actual link, as the government  
14 termed it, in its brief.

15 If the jury's considering the question of did he go to  
16 al Qa'ida seeking a camp or did he go to al Qa'ida intending to  
17 find a school, and keep in mind --

18 THE COURT: You mean Yemen.

19 MS. SILVA PALMER: I'm sorry.

00:14 20 The only question on the Yemen theory was his intent  
21 in going there, the jury considering weighing the question of  
22 whether he went seeking a camp or he went seeking a school.  
23 And the government says, Well, you can figure out what his  
24 intent was when he did this because when he came back, he  
25 started working for al Qa'ida.

1           That's a dramatic weight on the side of intending to  
2           find an al Qa'ida training camp. If he was just going there to  
3           find a school, that theory's a little bit more plausible if he  
4           didn't come home and start working for al Qa'ida.

5           THE COURT: Okay.

6           MS. SILVA PALMER: Thank you, your Honor.

7           MR. CHAKRAVARTY: Your Honor, let me just pick up on  
8           that point. The defense in the case on the Yemen theory was  
9           that he was going for innocent purposes, for a school, language  
00:15 10          training, something else. It did not differentiate whether it  
11          was an al Qa'ida training camp versus some other training camp.  
12          So my sister claims that the prejudice that may have emerged  
13          from Mr. Kohlmann's testimony about al Qa'ida somehow could  
14          have infected the purpose for which the defendant was going to  
15          Yemen is completely incongruous.

16          The jury was not going to determine whether he went to  
17          a training camp that was not al Qa'ida. The defense offered no  
18          evidence that it was some other training camp. So this notion  
19          that this spillover prejudice applied from Kohlmann's testimony  
00:15 20          to the Yemen camp is, frankly, unsustainable.

21          The government has disputed some of the things which  
22          the defendant claims were given in this case and unrefutable --  
23          the fact that he was an essential witness, even to the  
24          translation theory; that he was the only witness to the actual  
25          link to al Qa'ida. I won't belabor those except to say that we

1 dispute those and we articulated why -- but that highlights the  
2 fact that the defendant has not met its burden of proof at this  
3 post-trial, post-conviction, post-appeal, post-denial of cert  
4 proceeding where they have to do more than just speculate what  
5 a jury may have considered, but rather, actually demonstrate  
6 that there was a frailty that if Kohlmann was further  
7 impeachable, then this pillar of the government's case, the  
8 Yemen theory, which I'll get to in a moment as to why it was so  
9 obviously independent of the translation and other testimony  
00:16 10 for which Kohlmann was called -- and he wasn't the exclusive  
11 witness -- but they haven't met their burden. They haven't  
12 articulated one statement that Kohlmann said that was critical  
13 to that theory.

14           Going to the next point of the one area of testimony  
15 that Kohlmann had of relevance to the Yemen theory was a -- was  
16 factual testimony elicited for the first time on  
17 cross-examination. Essentially, Kohlmann was being put up and  
18 offering defense witness testimony, not testimony being offered  
19 to prove an element of the case by the government. So -- and  
00:17 20 now they're claiming that the purpose of that testimony was  
21 solely for the purpose of then impeaching that testimony.

22           He became the defense expert on whether there were  
23 camps in Yemen. Surely that cannot be prejudicial if, in fact,  
24 that were relevant -- and the government argues that it wasn't  
25 relevant at all whether there were actual camps -- but to the

1 extent it was an issue at all, it was a defense issue. They  
2 were trying to create a strong issue as to whether al Qa'ida  
3 existed and further to impeach Kohlmann's testimony, which as  
4 your Honor pointed out, was further advanced -- that theory was  
5 further advanced by their own experts. I think they called two  
6 experts, Mr. Johnsen as well as Mr. Sageman, to refute this  
7 issue that they created themselves on cross-examination.

8 But to put a finer point on why Kohlmann's testimony  
9 could not be material to the Yemen points, not only did he not  
00:18 10 testify about it, but I specifically asked him on redirect  
11 examination after this phantom issue about Yemen had been  
12 raised on cross, as to whether he had consulted any of the  
13 witness statements, whether he was aware of any testimony or  
14 information about the defendant's trip to Yemen, and he said  
15 no.

16 And there was zero evidence that he knew anything to  
17 either corroborate victim testimony or witness testimony or  
18 some of the coconspirators who was the core of the Yemen case.  
19 It was percipient witnesses, it was people who shared the  
00:18 20 intent and actually went on the journey with him, it was his  
21 own statements. The evidence regarding the Yemen trip was  
22 overwhelming. And so then I'll come back to where we started,  
23 which is *Griffin*.

24 In light of that overwhelming testimony about the  
25 Yemen trip, this isn't the sufficiency matter, but it is hard

1 to imagine a circumstance in which Kohlmann's testimony could  
2 potentially be material to overwhelming evidence, especially  
3 given that it would be impeaching of Kohlmann's general  
4 credibility as opposed to a specific fact that he said about  
5 Yemen or about the Yemen trip intent. Your Honor carefully  
6 policed the 704 rule, and he didn't opine as to Mr. Mehanna's  
7 requisite intent.

8 But with overwhelming evidence showing that the Yemen  
9 trip occurred for these illicit purposes as enunciated in  
00:19 10 Counts 1 through 4, further impeachment of him could not have  
11 impacted that basis of conviction. And if nothing else, when  
12 the First Circuit says that the courts are not well equipped to  
13 intrude into that jury chamber, as the defense invites you to  
14 do, to speculate as to what facts ultimately went in their  
15 calculus, but in this case where there are two factually  
16 distinct theories, which each are supportable by facts in law,  
17 as the First Circuit has found, then a conviction on the  
18 factual basis for the Yemen theory is certainly sufficient and  
19 it -- the defense hasn't met any burden to suggest that  
00:20 20 Kohlmann's testimony could have impacted that aside from the  
21 rhetoric of saying, Well, it must have because this was an  
22 al Qa'ida case, and if he talked about al Qa'ida, then it must  
23 have infected it.

24 And at the end of the day when you go down into the  
25 record and you look at what they have offered to suggest that



1 that actually is what happened here and that there was a  
2 material -- there could be something that was material, there's  
3 just nothing there.

4 For that reason, the motion should be denied.

5 MS. SILVA PALMER: May I?

6 THE COURT: Yes.

7 MS. SILVA PALMER: Thank you, your Honor.

8 I would like to hone in on something Mr. Chakravarty  
9 just said. He's saying that the intent on -- the intent  
00:21 10 question for the jury on the Yemen theory was did he go for  
11 innocent purposes or did he not go for innocent purposes? And  
12 that's my point. My point is that the jury's much more likely  
13 to find that he didn't go for innocent purposes. If he came  
14 home from Yemen and started working for al Qa'ida, working for  
15 al Qa'ida is not an innocent purposes.

16 THE COURT: Well, are you saying that precisely,  
17 because I'm sort of trying to gauge -- when you say "working  
18 for al Qa'ida," are you making a specific point, are you saying  
19 generally acting in ways that gave support to foreign  
00:21 20 terrorists --

21 MS. SILVA PALMER: No, I'm making a specific point  
22 about al Qa'ida; this is not a question about advocacy and --

23 THE COURT: Putting that aside then, wasn't there  
24 overwhelming evidence of his interest in and support for jihad  
25 in general?

1 MS. SILVA PALMER: He can have interest and support  
2 jihad in general.

3 THE COURT: Well, an activity too.

4 MS. SILVA PALMER: Right. That's not a criminal  
5 activity. The fact that he --

6 THE COURT: Well, no, I'm talking about the criminal  
7 part of it. In other words, the defense is sharing -- are you  
8 saying that it's critical that the beneficiary of his efforts  
9 have been al Qa'ida specifically or jihad generally in the  
00:22 10 region?

11 MS. SILVA PALMER: Oh, I think I understand the  
12 distinction you're making. Whether he sought an al Qa'ida  
13 training camp or just any training camp? Is that what  
14 you're --

15 THE COURT: And when he was working on the 39 Steps,  
16 the "39 Ways."

17 MS. SILVA PALMER: The "39 Ways" is a great example.  
18 If he's working on --

19 THE COURT: Does that have to -- are you making the  
00:22 20 point that it's not shown sufficiently that that was for  
21 al Qa'ida?

22 MS. SILVA PALMER: Right. Kohlmann --

23 THE COURT: It's not shown sufficiently that it was  
24 jihadi support work?

25 MS. SILVA PALMER: What I'm saying is that there's a

1 distinction, and "39 Ways" is a great example. If he was just  
2 translating "39 Ways" because he's a guy interested in that  
3 sort of material, that's one -- that's an innocent activity.  
4 If, on the other hand, he's doing that because al Qa'ida has  
5 asked him to translate in order to further their efforts,  
6 that's a criminal activity.

7 And the "39 Ways" is a great point of how -- it's a  
8 great example of how Kohlmann's testimony infected the trial.  
9 Kohlmann said that that was a terrorist training manual, the  
00:23 10 defendant's witnesses said that was a standard religious text.  
11 So when he's -- when Kohlmann's saying these things about what  
12 he's doing, he's working directly for al Qa'ida, he's willing  
13 to do that when he comes home, that --

14 THE COURT: I don't think you're quite getting it.

15 MS. SILVA PALMER: I'm sorry.

16 THE COURT: So let me -- al Qa'ida as opposed to  
17 Lashkar-e-Taiba, for example? In other words, are you being  
18 specific to work for a particular terrorist organization as  
19 opposed to -- and in particular, Kohlmann's evidence work in  
00:23 20 general for the support of jihad, whoever might be willing to  
21 listen?

22 MS. SILVA PALMER: I'm making the al Qa'ida  
23 distinction because that's the only thing that makes that  
24 conduct criminal. So what the government is saying -- what the  
25 government argued at trial was that he went to Yemen in order

1 to support al Qa'ida, and when he came back from Yemen, he  
2 continued his work by continuing to work for al Qa'ida. And  
3 that testimony -- Kohlmann was the only source of the argument  
4 that Mehanna worked for al Qa'ida when he returned.

5 So according to the government's logic, he went there  
6 to support al Qa'ida, he returned and continued to work for  
7 al Qa'ida. That piece was a critical factor in determining his  
8 intent when he went to Yemen in the first place. And that's  
9 what the government argued to the jury.

00:24 10 THE COURT: Okay. Thank you. Unless you have another  
11 point. I didn't mean to cut you off.

12 MS. SILVA PALMER: I guess, your Honor, I do have  
13 another point. And I urge you not to get distracted by this  
14 training camp issue, about whether they were in Yemen or not.  
15 It is a factor that Kohlmann testified on that is favorable to  
16 us. It doesn't matter whether Kohlmann was providing defense  
17 testimony or not. What Kohlmann said there was that there are  
18 camps in Yemen, and the defendant's witness said the opposite.

19 But that's not the critical factor, whether there were  
00:25 20 camps there. The critical factor is that Kohlmann said that  
21 Mehanna worked for al Qa'ida, and that can't help but impact  
22 the jury's choice between an innocent intent to travel to Yemen  
23 and a criminal intent.

24 THE COURT: Okay. So in the initial briefing there  
25 was an issue as to whether the defense should see the material

1 that's at issue at the bottom of this, and I think the  
2 government's position was it wasn't necessary for anybody to  
3 look at it, but the government was willing to submit it in  
4 camera for the Court to look at.

5 When we were here in May, I thought maybe there was a  
6 targeted issue that could avoid a broader controversy. I think  
7 we're in the broad controversy now, as the discussion of the  
8 record indicates, so I think to complete the information that  
9 is available and perhaps bears on this ultimate issue as to  
00:26 10 whether there's a *Brady* violation, I think it's time for me to  
11 look at that material. So we'll make arrangements through  
12 Mr. Chakravarty to have that submitted to the Court in camera.

13 Am I correct that it's classified material? Is that  
14 right?

15 MR. CHAKRAVARTY: It is. And I think I've actually  
16 already made it available to the classified information  
17 security officer.

18 THE COURT: Okay. We have a mutual challenge.

19 MR. WILLETT: Your Honor, Sabin Willett with  
00:26 20 Miss Palmer. Can we get access to it as well?

21 THE COURT: Not yet. Not yet. I don't say no  
22 forever, but for now I'm going to look at it first.

23 MR. WILLETT: Thank you.

24 THE COURT: Obviously, this is all reserved, including  
25 my review of that and whatever else may follow. Okay. Thank

1     you.

2             THE CLERK: All rise for the Court.

3             (The Court exits the courtroom at 2:30 p.m.)

4             THE CLERK: Court will be in recess.

5             (The proceedings adjourned at 2:30 p.m.)

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## C E R T I F I C A T E

I, Marcia G. Patrisso, RMR, CRR, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Criminal Action No. 09-10017-GAO-1, United States of America v. Tarek *Mehanna*.

/s/ Marcia G. Patrisso  
MARCIA G. PATRISSE, RMR, CRR  
Official Court Reporter

Date: 8/4/16